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From the foregoing cases, the following rules seem deducible: Where the excavator has not erected a retaining wall to protect the lateral support, an action for damages lies against him only, regardless of whether he is owner at the time of the subsidence. But, if an excavator places an artificial wall to protect the adjoining soil, such wall becomes a charge upon the land to which it is attached, and a successor in title, to the land on which the wall rests, is liable for the injury resulting from his failure to maintain it.

ARMY AND NAVY—ENLISTMENT OF MINORS—RIGHT OF PARENTS TO DISCHARGE.—The respondent filed a petition in *habeas corpus* on behalf of his brother-in-law to secure his discharge from the army, on the ground that he is a minor, enlisted without his parent's consent. Prior to the petition, formal charges had been preferred against him for fraudulent enlistment, and he was being held to await court-martial. *Held*, the prisoner will not be discharged. *Ex parte Dostal*, 243 Fed. 664. For a discussion of the principles involved, see 4 VA. LAW REV. 232.

AUTOMOBILES—CARE REQUIRED OF AUTOMOBILE DRIVERS—PEDESTRIANS.—While unlawfully playing football in a city street, a boy was run over by an automobile. The boy did not see the approaching automobile, although frequently looking in that direction. The driver of the automobile failed to give any warning of his approach or to make any effort to avoid an accident. *Held*, the driver is liable. *Dervin v. Frenier* (Vt.), 100 Atl. 760. For a discussion of the principles involving the duty of an automobile driver, see 2 VA. LAW REV. 298. For a discussion of the principles involving the duty of a pedestrian, see 4 VA. LAW REV. 145.

BILLS AND NOTES—NEGOTIABILITY—EXTENSION OF TIME.—The Negotiable Instruments Law declares that a negotiable instrument must be payable on demand or at a fixed or determinable future time. The plaintiff, a holder in due course, brought suit upon notes otherwise negotiable, but which contained the provision that "all parties to this note, including sureties, indorsers, and guarantors consent to extensions of time on this note." *Held*, the notes are not negotiable. *Cedar Rapids National Bank v. Weber* (Iowa), 164 N. W. 233.

The provision of the Negotiable Instrument Law concerning certainty of time of payment is merely declaratory of the common law. Under the common law rule it was not required that the date of payment be definitely set forth in the instrument, provided it was payable *absolutely*, that is, it must be certain to fall due. Consequently instruments payable "on demand," "at sight," "after sight," "on or before a certain date" have always been held to be negotiable. *First National Bank v. Skeen*, 101 Mo. 683, 14 S. W. 732. See also BIGELOW, *BILLS, NOTES AND CHECKS*, 2 ed., 32 *et seq.* On this ground it has been held that a provision like the one in the instant case does not destroy the negotiability of the instrument. *City National Bank v. Goodloe-McClelland Com. Co.*, 93 Mo. App. 123.

A distinction was made in the early cases in regard to such provi-

sions, as to whether the extension was to be for a definite or indefinite time. The rule was laid down that if the stipulation be for a definite extension, the negotiability of the instrument is not thereby destroyed, because such a definite extension merely fixes a new date of maturity. *Anniston Loan Co. v. Stickney*, 108 Ala. 146, 19 South. 63, 31 L. R. A. 234; *State Bank v. Bilstad*, 162 Iowa 433, 136 N. W. 204, 49 L. R. A. (N. S.) 132. As far as can be ascertained these cases are followed in all jurisdictions.

The real conflict in the decisions arises where the extension is for an indefinite time, such as in the principal case. Some of the courts hold that such a provision renders the time of payment uncertain by leaving it at the option of the parties and the instrument is, consequently, not negotiable. *City National Bank v. Gunter*, 67 Kan. 227, 72 Pac. 842; *Glidden v. Henry*, 104 Ind. 278, 1 N. E. 369, 54 Am. Rep. 316; *Second National Bank v. Wheeler*, 75 Mich. 546, 42 N. W. 963.

But the great weight of authority is *contra* to the rule just stated. These courts base their decisions upon the ground that the holder is not obliged to extend the time but that such extension is optional with him. This, in effect, practically makes the instrument payable on demand, and hence negotiable. *First National Bank v. Buttery*, 17 N. D. 326, 116 N. W. 341, 16 L. R. A. (N. S.) 878, 17 Ann. Cas. 52; *Stitzel v. Miller*, 250 Ill. 72, 95 N. E. 53, Ann. Cas. 1912 B, 412, 34 L. R. A. (N. S.) 1004. This view was supported in a very recent case by a well reasoned argument and an exhaustive comparison of the authorities. *First National Bank v. Stover*, 21 N. M. 453, 155 Pac. 905, L. R. A. 1916 D, 1280.

In an earlier case in the Iowa court, it was held that a stipulation in a note that the "sureties hereby consent that the time of payment may be extended from time to time without notice thereof" did not destroy its negotiability. The court in the instant case refused to follow this earlier case by attempting to reconcile the two decisions on the ground that in the earlier case there was a definite extension of time. *Farmer v. Bank of Graettinger*, 130 Iowa 469, 107 N. W. 170. Such a distinction seems wholly unwarranted.

The rule in regard to time is not that the definite date must be set out in the instrument, but that its payment must be subject to no contingency. "That is certain which is capable of being made certain," is a maxim of the law. Thus, a note was held negotiable, which stipulated that, if there was not enough money realized from the good management of a certain enterprise to pay the note, the maker was to have more time in which to pay it. *Capron v. Capron*, 44 Vt. 410. And where there was stipulation that a note was to be paid within thirty days after demand, or upon notification of thirty days in any newspaper published in a certain city, it was held negotiable. *Protection Ins. Co. v. Bill*, 31 Conn. 534.

While there is some authority for the decision in the instant case, the doctrine seems local to one section of the country. The view sustained by the better reasoned cases, and also by the weight of authority, is that such an agreement for an extension of time does not affect the negotiability of an instrument.